

Trends in State Employment Law

Many state and local legislatures are taking action in several areas of employment law due to the confusion, sluggishness, and/or inaction on the federal level. Some laws passed are part of long-evolving trends such as restricting inquiries into criminal and pay history, while others are responses to new social movements such as #MeToo. The following is a list of the prevailing laws that are popular. Note that the laws vary and may or may not apply to your business. Our best advice is to keep an eye out and if you are unsure if any of these apply to you and your locations, you can contact your local labor attorney or HR professional, or contact us at Affinity HR Group to evaluate your particular situation.

Harassment / Sexual Harassment:

Goal: to prevent harassment / sexual harassment in the workplace and to protect victims of harassment / sexual harassment

- Mandates specific policy language as well as regular training for supervisors, new hires, and/or all employees
- Prohibits use of non-disclosure agreement and/or confidentiality clauses and requiring an employee to waive his / her rights to legal remedies allowed for harassment claims
- May require reporting certain sexual harassment settlements to state authorities

Discrimination:

Goal: to expand discrimination protection to vulnerable employees in certain minority groups such as LGBTQ, religious, and national origin

- Allows employees to use bathrooms that matches their gender identity
- Expands national origin protection to include “physical, cultural, and linguistic attributes” of a national origin group, as well as attendance in an organization, school, or religious institution associated or identified with a certain group
- Prohibits English-only requirements except in certain circumstances (usually safety-related)

Pay Equity:

Goal: to eliminate pay inequity for traditionally disadvantaged groups such as women and minorities

- Requires fair pay for equal or “substantially similar” work
- Prohibits asking about wage or salary history so new hire pay is based on fair wage for job to be done, not what they were paid previously
- May allow asking for limited information about other compensation previously received such as benefits and bonuses (i.e., employer can ask if applicant had them but not their value)

Fair Chance or “Ban-the-Box” Laws:

Goal: to provide applicants a fair chance at employment by moving criminal history inquiries later in the process so employers get to know applicant before judging them on past

- Prevents asking about criminal history on employment application except in certain industries such as child and elder care, security guards, and financial institutions
- Allows asking applicant in the interview, but some laws delay inquiry until after conditional offer of employment is extended
- Prohibits considering certain convictions (such as old convictions, misdemeanors, or convictions unrelated to the job) in employment decisions

Paid Family and/or Medical Leave:

Goal: to provide employees paid protected leave for eligible reasons such as their own medical condition, caring for a family member, or to bond with newborn, newly adopted, or foster child

- Pay usually coordinated through insurance funded by employee deduction and/or company contribution
- Note: many states have similar laws regarding unpaid leave

Required Sick Time:

Goal: to provide employees paid and protected time off to care for themselves when sick or injured

- Offers sick time off for all employees, including part-time, based on number of hours worked and time of service
- Delineates which companies have to provide paid vs. unpaid time based on number of employees (in state or total)
- Requires allowing employees to use available time to care for family members who are sick or injured

Marijuana Use (recreational and/or medical use):

Goal: to dictate how to handle legal medical and/or recreational marijuana

- Does not permit an employee to use marijuana in the workplace just like you would not be required to allow an employee to drink on the job
- May require companies to change drug testing standards and disciplinary policy if usage from off-hours use could show up in results

Pregnancy Accommodation:

Goal: to provide reasonable accommodation when needed for pregnant employees (Note: discrimination is already prohibited.)

- Requires workplaces to be readily accessible to provide reasonable accommodations to employees with medical needs arising from pregnancy, childbirth, or related medical conditions, including lactation

Scheduling Flexibility / On-Call:

Goal: to provide employees, especially in service & retail industries, with a fair workweek

- Requires predictability in hourly employee's work schedule so employee can consistently schedule a second job, child care, personal appointments, etc.
- Requires employers give advanced notice before changing an employee's schedule
- Requires written permission from employee before adding or changing hours
- Restricts on-call shifts, requiring providing employee with certain notice before scheduling or cancelling a shift
- Prohibits employees being scheduled to work two shifts with less than 11 hours between them (i.e., closing one day and opening next day)
- Establishes premium pay rates for employers who do not follow requirements
- Requires filling open, more desirable shifts with current employees before hiring new people

Data Breach Protection and Notification:

Goal: to protect the sensitive personal and financial information of clients, customers, and employees

- Must implement and maintain reasonable security measures to protect sensitive personally-identifying information against breach
- Must conduct prompt, good faith investigation into any breach and notify any customer, client, or employee impacted
- May need to notify law enforcement

Weapons:

Goal: to regulate an employee's ability to bring legal weapons to workplace (Note: varies from state-to-state as to making it more restrictive or more permissible)

- Some states are allowing companies to prohibit anyone (employee or third-party) from bringing a weapon on company premises regardless of any carry permit
- Some states are making companies allow employees with concealed carry permits to keep weapon hidden in locked personal vehicle in company parking lot (companies can still prohibit in building or company vehicles if properly posted)

All companies have to be aware of the ever-changing employment laws that impact their workplace. State and local laws tend to change quicker and without much warning, so staying

plugged into what your state is doing is essential. And, if you operate in multiple states, you must be aware of the different state-to-state / city-to-city laws which may require your policies and procedures to be changed. Again, to assess whether these evolving laws and regulations apply to you, we recommend you contact your HR counsel. As always, we at Affinity HR Group are always on hand to help!

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Paige McAllister is a contributor for Affinity HR Group, Inc., AOCA's affiliated human resources partner. Affinity HR Group specializes in providing human resources assistance to associations such as AOCA and their member companies. To learn more, visit www.affinityHRgroup.com.